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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/704,028	11/01/2000	Gary G. Lenihan	060545/0456	2436

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Piper Marbury Rudnick & Wolfe
P O Box 64807
Chicago, IL 60440-0807

EXAMINER

MILLER, BENA B

ART UNIT	PAPER NUMBER
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3712

DATE MAILED: 05/01/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/704,028

Applicant(s)

LENIHAN, GARY G.

Examiner

Bena Miller

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6,9,11-14,16,17 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6,11-14,16,17 and 21 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 6 and 11 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 2, applicant recites in claim 1 the island is removably coupled to the front surface of the main unit; however, applicant recites that the island is removably attached to the main unit at one of the first and second sidewalls. It is unclear to the examiner if the island is removably coupled to the front surface or one of the first and second sidewalls of the main unit.

Regarding claim 6, applicant recites in claim 1 the island is removably coupled to the front surface of the main unit; however, applicant recites that the island is removably attached to the main unit at one of the a left side and right side. It is unclear to the examiner if the island is removably coupled to the front surface or one of the left and right side of the main unit.

Claim 11 is vague and indefinite because the claim recites "the island"; however, claim 1 recites a toy kitchen in the preamble of the claim. The specific structure of the claim intended to be encompassed is not clear. In this Office Action, the examiner considers the claim to recite only intended use of the claimed apparatus.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 11-14, 16 17 and 21 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Klein.

Regarding claims 1 and 21, Klein teaches in figures 1-11 a toy kitchen having a main unit (marked copy fig. 9 and fig. 10 and 11), a repositionable island removably coupled to the front surface of the main unit (marked copy fig. 9; note, element figure 5 couples the repositionable island to the front surface of the main unit) and the repositionable island is perpendicular to the front surface of the main unit (marked copy figure 9). It should be noted that applicant did not define a front surface in reference to the main unit.

Regarding claim 2, as best as understood, Klein further teaches the repositionable island removably coupled to the second side wall in figure 11.

Regarding claim 3, Klein further teaches a stove top main unit and a countertop island in figure 9.

Regarding claim 6, as best as understood, Klein further teaches the island is removably connected to the left side of the main unit in figure 11.

Regarding claim 11, as best as understood, Klein further teaches a stove top in figure 9.

Regarding claim 12, Klein teaches in figures 1-11 a toy kitchen having a first unit extending along a first vertical longitudinal plane (fig. 9), at least one removable and repositionable second unit extending along a second vertical longitudinal plane and position perpendicular (fig. 9), the second unit is removably connected to the front surface of the first unit (fig.9) in a first position and in a second position the first and second longitudinal planes are substantially coplanar (fig. 11).

Regarding claim 13, Klein further teaches the first and second play areas are partially bounded by one side of the first unit and second unit (marked copy fig. 9) and the second position defines a continuous play area extending along one side of the first and second units in figure 11.

Regarding claim 14, Klein further teaches a main unit and an island in figures 9 and 11.

Regarding claim 16, Klein further teaches a stove top first unit and a cabinet second unit in figures 9 and 11.

Regarding claim 17, Klein further teaches the first unit removably positioned to the second unit in a first position as seen in figures 9 and 11.

Allowable Subject Matter

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 01/13/03 have been fully considered but they are not persuasive. In response to applicant's arguments that Klein fails to teach the repositionable island extends outwardly from the front surface of the main unit and the repositionable island is positioned perpendicular to the main unit. It should be noted applicant fails to define a front surface of the main unit; therefore, the examiner has defined the front surface of the main unit disclosed in the marked up copy figure 9 of Klein.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "the second unit not extending outwardly from the main unit so that it is oriented perpendicular to the front surface of the main unit) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that a child would not be able to use the components of the main unit of Klein patent if the module are place in front of the components of the main unit, the examiner disagrees. As noted above, applicant fails to define the front surface of the main unit; therefore, the front surface, as defined by the examiner, in the Klein reference meets the limitation of the claimed invention.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3712

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643. The examiner can normally be reached on Monday-Friday.

bbm
April 29, 2003



DERRIS H. BANKS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

